

Cheshire West and Chester Council

Delegated Report

Application Number **SD/033/FP12 Barrow**

Description **Proposed public path diversion order under
section 119 of the Highways Act 1980**

Site address **Public Footpaths No 12 and 23 Barrow**

Applicant Name **E Green, The Barn, Barnhouse Lane, Barrow and R
Nevett, Broomhill House Farm, Irons Lane, Barrow**

Ward **Gowy Ward**

Ward Members **Councillor Eleanor Johnson**

Case Officers **Adele Mayer, Public Rights of Way Officer tel:
01606 271822**

Date **12th January 2016**

Recommendation

- (1) That an Order be made under Section 119 of Highways Act 1980, diverting Footpath No.12 (part) and No 23 (part) in the Parish of Barrow as shown on Plan No SD/033A ("The Plan") by black broken lines on the grounds that it is expedient to do so in the interests of the owner and occupiers of the land concerned and in the interest of the public.

- (2) That the Area Place Manager be authorised to take any action considered necessary in respect of the confirmation of the Order hereby authorised to be made.

1. Site Description

1.1 Footpath No 12 Barrow runs from Barnhouse Lane in an easterly then southerly direction to Hollowmore Heath (C223), Barrow. Footpath No 23 Barrow runs from Footpath No 12 at Broomhill House in a northerly direction to Barnhouse Lane (C222).

1.2 The section of Footpath No 12 affected by the proposal runs from the commencement on Barnhouse Lane at OS grid reference SJ 4764 6973 for approximately 274 metres in an easterly direction to OS grid reference SJ 4789 6963 on the east side of the former farm buildings (Points A to B on the Plan) .

1.3 The section of Footpath 23 affected by the proposal is a short connection of approximately 3 metres from its junction with Footpath 12 at OS grid reference SJ 4779 6968 to OS grid reference SJ 4779 6969 (Point I to C on the Plan).

2. Background

2.1 An application was submitted by the landowners at Broomhill House Farm and The Barn requesting a diversion of Footpath No 12 under the Town and County Planning Act 1990 s257, in order to allow development to proceed under planning permission 12/04079/FUL. Former farm buildings had been developed into two properties and it is intended to erect a brick wall to divide the two dwelling homes. Plan SD032 shows the first proposal to divert as a consequence of development.

2.2 At the same time as the diversion application was made the Council were trying to enable the opening of the point of commencement of Footpath 12 on Barnhouse Lane which is currently impassable because of overgrowth and the stone steps in the field bank that have degraded (Point A on the Plan). A

request was made by the CWAC Network Officer, in the interest of the public, for a diversion of Footpath 12 under the Highways Act 1980 s119), to provide a safer junction with the highway. Landowners of the first application were agreeable to combining the two proposals to divert parts of the footpaths. A proposal to divert the footpath 120 metres to the north, to a commencement point on Barnhouse Lane near to Broomhill bridge, was deemed to be the safest option and was agreed would also be a benefit to the landowners by moving the footpath further away from the buildings and increasing their privacy. See plan SD031.

- 2.3** The landowners own most of the land over which the current path runs and over which the diversion will run. An adjacent landowner owns the first field over which the commencement of Footpath 12 runs, and is in support of the diversion (Point A to E on the Plan). The neighbouring owners of land on the east side of the buildings, where the continuation of Footpath 12 runs, have supported the proposal and during consultation have requested clearer signage if the proposal is confirmed (Point H to B on the Plan).
- 2.4** The Definitive Line of Footpath 12 runs over pasture and unmetalled track and concrete over the access drive and farm yard area and continues over pasture. Footpath 23 runs over pasture. There are historical limitations: steps and “bars” at the junction with Barnhouse Lane (Point A on the Plan) and “bars” at the junction to the farm access drive. The diversion of Footpath No 12 is shown on the Plan by a broken black line between points F to G to H to B, the diversion of Footpath No 23 is shown on the Plan by a broken black line between points E to D to C.
- 2.5** The surface of the new routes will be over pasture. Ground works will take place to provide a sloping ramp at Point F on the Plan, with a gate at the lower level for public safety purposes. A gate at Point H at the landowner boundary and a gate at Point D both for stock control purposes will be installed. Gates are indicated on the Plan by “g”. Gates inserted for stock control purposes will be under license. Other works will be carried out for land drainage as indicated on the Plan.

2.6 The length of the section of Footpath 12 to be stopped up is approximately 274 metres (Point A to B on the Plan) and the length of the new route approximately 304 metres (Point F to G to H to B on the Plan). The length of Footpath No 23 to be stopped up is approximately 3 metres (Point I to C on the Plan) and the length of the new route 55 metres (Point E to D to C on the Plan), the difference arising because Footpath 23 currently utilises the route of Footpath 12 as a continuation to the same point E on the Plan.

3. Consultation

3.1 Barrow Parish Council has written to state that they “are happy with the proposed amendment”, noting “one boggy patch” but state there are “no issues with the rest of the route”.

3.2 The Council’s environmental advisory team had no objection but had concerns about any works or surfacing materials that may be used and has advised environmentally friendly materials, with a preference for protecting the grassland habitat.

3.3 The Ward Councillor has been consulted and noted the section near to Broomhill Bridge is usually boggy.

3.4 Statutory undertakers have been consulted and no objections have been received. If a diversion order is made, existing rights of way access for the statutory undertakers to their equipment and apparatus are, in any case, protected. In addition to statutory undertakers the Environment Agency (EA) has been consulted. Whilst Salters Brook lies in a flood plain, the most usual area of flooding is on the north side of the brook. There is no objection to the final proposal. Amendments to plans were made to accommodate a 6 metre clearance from the edge of the watercourse for environmental reasons. The advice was that any surface material should be kept to a minimum although it is unlikely that it would have any significant effects on flood levels. The EA Officer noted the main area of flooding is on the north side of the brook, where

Footpath No 23 runs; that land is in different ownership and is not in this proposal.

3.5 User groups have been consulted. During consultation for the diversion, consultees favoured diverting the footpath away from its current point of commencement on Barnhouse Lane. The consensus was because “the structure of the sides of the road being sandstone giving walkers no place to protect themselves while waiting to join the footpath”. The Peak and Northern Footpath Society has no comments to make to the final proposal. A representative from the Mid Cheshire Footpath Society noted that the commencement point off Barnhouse Lane has not been used for some years because it has been overgrown and is sited at a dangerous point. Concern was raised, however over the diversion of the footpath close to Salters Brook because of flooding. A representative of the Chester Ramblers Group is happy with the final proposal. A point was made that Salters Brook floods at the bridge and reference made to flooding of Footpath 23. Advice regarding the potential for flooding has been sought from the Environment Agency and is discussed at para 3.4. Adjacent property owners agree with the proposal.

4. Relevant Legislation

4.1 In accordance with Section 119(1) of the Highways Act 1980 it is within the Council’s discretion to make the Order if it appears to the Council to be expedient to do so in the interests of the public or of the owner, lessee or occupier of the land crossed by the path. It is considered that the proposed diversion is in the interests of owners and occupiers of the land concerned and also in the interest of the public for the reasons set out in paragraphs 6.1 and 6.2 below and thus that the test for the making of an order has been satisfied.

4.2 It is also necessary to consider whether the tests for confirming the order are likely to be satisfied so as not to make an order that is manifestly incapable of confirmation. At the confirmation stage, the following factors must be taken into account in addition to those matters referred to in paragraph 4.1 above.

4.2.1 Whether the path is substantially less convenient to the public as a consequence of the diversion.

And whether it is expedient to confirm the Order considering:-

4.2.2 The effect that the diversion would have on the enjoyment of the path or way as a whole.

4.2.3 The effect that the coming into operation of the order would have as respects other land served by the existing public right of way.

4.2.4 The effect that any new public right of way created by the order would have as respects the land over which the rights are so created and any land held with it.

4.3 In addition to the matters contained in S119 of the Highways Act 1980, the Council in preparing this report and recommendation, has had regard to a number of other considerations required by law including:-

4.3.1 the needs of agriculture and forestry and the desirability of conserving biodiversity, flora, fauna and geological and physiological features.

4.3.2 requirements in relation to Equality legislation and the prevention of crime and disorder.

4.3.3 all material provisions of the Council's Rights of Way Improvement Plan.

4.4 Where objections to an order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. Where there are no outstanding objections to an Order, it is for the Council to determine whether the Order should be confirmed

5. Relevant Policies

The following policies and protocols are relevant to this application.

5.1.1 Rights of Way Improvement Plan 2011-16

Statement of Action BS1 “we will seek to address safety concerns highlighted whilst using the network during consultation”

Statement of Action E05 “we will follow the Equality Act 2010 to comply with standards for mobility and visually impaired users where appropriate and reasonable”

5.1.2 “Structures on rights of Way” 29th July 2009 Committee report and “Authorising Structures (gaps, gates and stiles) on rights of way” October 2012 Defra guidance

6. Assessment and Issues

- 6.1** The purpose of the diversion is to alter the definitive line of the footpaths to increase the safety of the access to the footpath from the highway and to divert to enable the development under planning permission 12/04079/FUL. It is in the interests of the applicant landowners and in the interests of the public and in this respect it is considered that the proposal satisfies the tests set out in paragraph 4.1 above.
- 6.2** The length of the diversions has been considered both with regard to the comparative length of the diversions and also with comparison to the through routes they service. The footpaths are mainly used for leisure and recreational purposes in that they do not serve as a thoroughfare to, for example, a school. The access point to Footpath 12 will be 120m further north of the current point of access, but it is thought that the increase in safety and visibility compensates for the extra walking distance from the southerly direction. The new route for Footpath 12 will be less commodious in part because the surface will be pasture and uneven compared to the current driveway. However, as the footpath, taken as a whole, runs over pasture, it is considered this will be acceptable and in character with the remainder of the route. The diversion of Footpath 23 replicates what is used currently, although the new route will run over pasture. Taken as a whole, Footpath 23

runs over pasture and it is thought that the diversions are as convenient and as enjoyable as the current route.

- 6.3** There are no significant differences in the views enjoyed by the current routes in comparison with the proposed alternatives. It is possible to view the farm buildings from the new route, and the new junction with Barnhouse Lane should increase the safety of the public.
- 6.4** In respect of the expediency of confirming the order taking into account the matters mentioned in paragraphs 4.2.3 and 4.2.4 above, it is considered that there are no material impacts on land currently served by the paths or to be crossed by the new paths which affects the expediency of confirming the proposed order.
- 6.5** In respect of the matter mentioned in paragraph 4.3.1 regard has been paid to the need to facilitate development and consider the environment and the needs of agriculture.
- 6.6** In respect of the matter mentioned in paragraph 4.3.3 and 4.3.2 regard is paid to Statement of Action Better Safety (BS1) of the Rights of Way Improvement Plan 2011-2016 in which the Council states we will work to address safety concerns; for that purpose, the Council supports the diversion of the termination point of Footpath No 12 and in the event of an order being successfully confirmed the limitation of gates as shown on the Plan will be installed in accordance with Council protocols and Statement of Action E05.

7. Conclusion

- 7.1** The proposal to divert has been consulted upon and the responses received have been in support of the diversions.
- 7.2** After careful consideration of the application and the relevant law and policies it is considered that it is expedient to divert part of Footpath No 12 and No 23, Barrow as illustrated on the Plan.

8. Associated documents

Application File SD 033/FP12Barrow